



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Consider the Adoption of a
General Order and Procedures to Implement the Digital
Infrastructure and Video Competition Act of 2006.

Rulemaking 06-10-005
(Filed October 25, 2006)

**OPENING COMMENTS OF THE GREENLINING INSTITUTE ON THE OPINION
RESOLVING ISSUES IN PHASE II**

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September 13, 2007

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I. INTRODUCTION

The Greenlining Institute (“Greenlining”) respectfully submits the following opening comments to the California Public Utilities Commission (“Commission” or “CPUC”) in response to the Opinion Resolving Issues in Phase II (“Proposed Decision”) of this proceeding for the implementation of the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA” or “the Act”).

Greenlining commends the Commission on the proactive stance it has taken to ensure that all California consumers have access to cable and broadband services. Greenlining also commends the Commission on the reporting requirements set forth in the proposed decision, and believes they will provide valuable information to the Commission. However, in order to ensure that DIVCA truly makes strides toward closing the digital divide, the Commission must know more than just who is accessing cable and broadband services and how they are accessing them. It must also know the reasons why households that remain unconnected are not utilizing available services. Therefore, Greenlining recommends additional reporting requirements related to pricing and quality of available services, to ensure that these services are truly accessible to the consumers DIVCA seeks to benefit.

II. THE PROPOSED DECISION ENSURES THAT MARKET COMPETITION WILL IMPROVE SERVICE TO CURRENTLY-UNDERSERVED AREAS, CONSISTENT WITH DIVCA'S INTENT

Greenlining supports the maintenance of consistent build-out standards for video franchise holders with fewer than one million telephone customers, as well as those with more than one million telephone customers.¹ Greenlining also strongly supports the Proposed Decision's extension of Pub. Util. Code § 5890(b)'s benchmarks for non-discriminatory service to low-income households to video franchise holders with fewer than one million telephone customers.² We applaud the Commission's demonstrated commitment to consumer protection and to preventing discrimination against underserved communities in the provision of cable and broadband services. Greenlining agrees that it is in the public interest to make broadband and cable services widely available,³ which is consistent not only with DIVCA's intent to ensure quality services to *all* California consumers, but also with the Commission's long-standing role as a national leader in proactive consumer protection initiatives. Further, Greenlining agrees that the existing protections under Pub. Util. Code § 5890(c), which allow small carriers to demonstrate compliance with build-out requirements within a reasonable time and to petition for exemption if the requirements are cost-prohibitive, are sufficiently protective of small business interests. These protections also maintain efficiency in the franchise administrative process, by only requiring case-by-case review in the event of a small carrier's petition for extension or exemption.

¹ Proposed Decision, p. 14

² Proposed Decision, p. 14-15.

³ Proposed Decision, p. 14.

Greenlining also supports the Commission's decision to require small carriers to inform the Commission of their build-out plans in advance.⁴ The maintenance of these carrier requirements regardless of size demonstrates the Commission's commitment to DIVCA's intent, which is to reform the franchise system *for the benefit of consumers*, and not just for the benefit of franchise holders and applicants.

III. MORE COMPREHENSIVE REPORTING REQUIREMENTS WILL ENSURE THAT THE COMMISSION'S COMMITMENT TO EXPANDING CABLE AND BROADBAND ACCESS WILL BE SUCCESSFULLY EXECUTED

The Commission has demonstrated yet again, through the build-out and non-discrimination requirements set forth in the Proposed Decision, its commitment to ensuring that high quality telecommunications services are available to all California consumers. However, Greenlining believes it will be difficult to ensure that DIVCA's purpose is actually being achieved if the Commission does not expand upon the reporting requirements contained in the Proposed Decision.

The Proposed Decision requires reporting on the kinds of devices being used to access broadband in rural areas, which the Commission feels are the majority of currently underserved areas. The Proposed Decision also requires franchise holders to report the number of households in the holder's service territory that are subscribers, by census tract. This will allow the Commission to monitor compliance with DIVCA's non-discrimination provisions.⁵ Greenlining supports both of these requirements. However, Greenlining respectfully urges that additional reporting is required so that the Commission can better understand the data these requirements will generate.

⁴ Proposed Decision, p. 16.

⁵ Proposed Decision, p. 23-24.

The reporting requirements described in the Proposed Decision may reveal to the Commission that certain areas remain undersubscribed even when cable and broadband services are available. If that does occur, the proposed reporting will not indicate *why* increased build-out is not actually resulting in more households utilizing broadband and cable technology. DIVCA's intent is to increase the number of California households utilizing cable and broadband. An essential component of executing this intent is determining why households that remain unsubscribed are not taking advantage of the services available to them. It is likely that two of the main reasons households remain unsubscribed are pricing and quality of available service.

The Proposed Decision notes that DIVCA does not give the Commission jurisdiction over pricing issues.⁶ However, many low-income households may be unable to afford the cable and broadband services available in their area. Without exercising any control over service pricing, Greenlining submits that the Commission should require reporting on the cost of service by census tract so that it can know whether low-income households are being priced out of digital inclusion. If that is the case, the Commission should be aware of the problem so that it can devise a solution. Such reporting would not overstep the jurisdiction given to the Commission under DIVCA, but would allow the Commission to ensure that DIVCA is actually fulfilling its purpose of closing the digital divide.

Quality of service may also prevent some households from utilizing existing cable and broadband services. It is entirely possible that families in an area in which only slower connections or unreliable service are available will find the service not worth the price, and remain unsubscribed. The Commission has demonstrated its commitment to ensuring that DIVCA actually does increase use of cable and broadband services across the state, through the

⁶ Proposed Decision, p 22.

build-out and non-discrimination requirements described in the Proposed Decision. Greenlining recommends that it further solidify this commitment by ensuring that all areas have access to quality service, not just lip service. If a problem with quality of service in certain areas does exist, the Commission must first be aware of it before it can take steps to correct it.

For these reasons, Greenlining recommends that the Commission also require carriers to report out on pricing of available services by census tract, and on the kind and quality of services available by census tract.⁷

IV. INTERVENOR COMPENSATION SHOULD BE AVAILABLE TO PARTIES REPRESENTING CONSUMER INTERESTS AFFECTED BY DIVCA

As in any proceeding before the Commission, participating parties, some of whom may be the sole voice for a particular community of consumers, should receive compensation for their contributions. Participating parties ensure that the Commission's decision serves the needs of all affected parties to the fullest extent possible. Parties must expend their resources in order to ensure that the needs of their constituents are represented. Millions of California consumers are represented by organizations participating in this proceeding, the very consumers DIVCA intends to serve. Greenlining respectfully requests that the Commission understand these organizations cannot do so out of charity. In the interest of the consumers represented by these groups, Greenlining recommends that the Commission allow intervenor compensation to be claimed in this proceeding.

V. CONCLUSION

Greenlining commends the Commission on the extent to which it has represented the interests of California consumers in this proceeding, through the build-out, non-discrimination, and reporting requirements described in the Proposed Decision. We urge the Commission to go

⁷ See Reply Comments of the Greenlining Institute on Phase II, pp. 5-7.

one step further and adopt the additional reporting requirements described above. These will ensure that the Commission can maximize DIVCA's potential as a tool by which the growing digital divide can be minimized for millions of California consumers.

Dated: September 13, 2007

Respectfully submitted,

/s/ Robert Gnaizda

Robert Gnaizda

The Greenlining Institute

/s/ Thalia N.C. Gonzalez

Thalia N.C. Gonzalez

The Greenlining Institute

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CERTIFICATE OF SERVICE

I, Thalia N.C. Gonzalez, am 18 years of age or older and a non-party to the within proceeding. I am a resident and citizen of the State of California with the business address at the Greenlining Institute of 1918 University Avenue, Second Floor, Berkeley, CA 94704 and telephone number of 510-926-4002.

On September 13, 2007, I caused the following document:

**OPENING COMMENTS OF THE GREENLINING INSTITUTE ON THE OPINION
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to be served upon all interested parties of record in R.06-10-005 named in the official service list via e-mail to those whose e-mail address is listed in the official service list and via first class mail with postage prepaid or facsimile to those whose e-mail address is not available.

I certify that the foregoing is true and correct.

Executed in Berkeley, California on September 13, 2007.

/s/ Thalia N.C. Gonzalez
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